



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: LNM Corporation

File: B-247669

Date: April 29, 1992

Larry N. McKenney for the protester.
Paul M. Fisher, Esq., Stephen T. Orsino, Esq., and Ann L. Giddings, Esq., Department of the Navy, for the agency.
Daniel I. Gordon, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest grounds challenging the size status of a potential offeror and the handling of a Freedom of Information Act request are dismissed as not within the bid protest jurisdiction of the General Accounting Office.
2. Protest challenging agency's decision to require submission of proposals on an all-or-nothing basis is denied where agency conducted a market survey and reasonably based its decision to require all-or-nothing proposals on the results of that survey.
3. Protest contending that agency should have procured services in the framework of the Small Business Administration's section 8(a) program is dismissed where no allegation of regulatory violation, fraud, or bad faith was raised in the initial protest, and the allegation made in a later filing is untimely.

DECISION

LNM Corporation protests several issues associated with request for proposals (RFP) No. N62477-92-R-3010, issued as a 100-percent small business set-aside by the Department of the Navy's Patuxent River Naval Air Station. The RFP seeks proposals for grounds maintenance services at four different Navy facilities in Maryland. LNM contends that one possible offeror is not a small business; that certain information requested by LNM under the Freedom of Information Act was not provided by the agency; that offerors should not be required to submit proposals on all four sites on an

all-or-none basis; and that the services at issue should have been procured in the framework of the Small Business Administration's (SBA) section 8(a) program.

We deny the protest in part and dismiss it in part.

The RFP was issued by the agency on February 3, 1992, with March 20, 1992, set as the date for submission of proposals. By letter dated February 20, 1992, LNM raised four issues in a protest to our Office. We address each of those issues in turn.

First, LNM contends that Joppa Maintenance Company, a potential offeror and apparently the incumbent, is not a small business and is therefore ineligible for award. A challenge to a company's size status is for review solely by the SBA and will not be reviewed by our Office. 4 C.F.R. § 21.3(m)(2) (1992). Accordingly, this protest ground is dismissed.¹

Second, LNM alleges that not all the information that it requested under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), was provided by the agency. Our Office has no authority to determine what information an agency must disclose in connection with a party's request to the agency under FOIA, and LNM's recourse in this regard is to pursue the disclosure remedies under FOIA. See Government Sys. Integration Corp., B-227065, Aug. 7, 1987, 87-2 CPD ¶ 137. Consequently, this protest ground is also dismissed.

Third, LNM protests the RFP requirement that offerors submit proposals on all four sites on an all-or-none basis. LNM contends that allowing offerors to submit proposals on less than the full complement of sites will assist small businesses to compete and will enhance competition.

In response, the Navy states that the RFP, as issued, did not require all-or-none offers, although the agency had intended to include that requirement in the RFP. Having discovered the agency's earlier error in response to the protest, the contracting officer conducted a market survey of 17 small businesses to assess the impact of soliciting offers solely on an all-or-none basis. The survey indicated that 15 small businesses considered the combined volume of the work at all sites appropriate, and several indicated that they would be less likely to invest in needed equipment

¹We note that the Navy referred the protest to Joppa's size status to the SBA, which dismissed the protest as premature because it was raised prior to the date set for receipt of proposals.

if they were performing less than the full complement of work. No company indicated that soliciting the work for the four sites on an aggregate basis would lead to higher proposed prices or would deter an offeror from submitting a proposal. Accordingly, the agency concluded that the work should be solicited on an all-or-none basis and issued an amendment on March 18, 1992, modifying the RFP in that regard.

Our review of an agency's determination regarding whether the government's advantage lies in single, not multiple awards, is limited to ascertaining whether the determination has a reasonable basis. Dennis Tiche, B-211120, Sept. 12, 1983, 83-2 CPD ¶ 311. LNM does not allege that it has been prejudiced by the agency's decision to require all-or-none offers, nor does it claim that this decision will preclude any lower-priced offeror, or indeed any offeror, from competing. The market survey conducted by the agency provides a reasonable basis for the agency's conclusion that requiring such offers will not limit the ability of small businesses to compete or otherwise restrict competition. LNM's comments on the agency report fail to address the market survey or the agency's conclusions from that survey. Because the record contains no evidence that requiring aggregate proposals will restrict competition or raise the overall price to the government, this protest ground is denied.

Finally, LNM contends that the services at issue should have been procured in the framework of the SBA's section 8(a) program. LNM alleges that the contracting officer indicated to the protester that she considered offering the procurement for the 8(a) program, but that the SBA refused to accept the program. LNM further alleges that it contacted the SBA and that agency had no knowledge of any inquiry by the contracting officer.

The decision to place, or not to place, a procurement under the 8(a) program is not subject to review by our Office absent a showing of possible regulatory violations or of fraud or bad faith on the part of government officials. 4 C.F.R. § 21.3(m)(4). Because no allegation of regulatory violation, fraud, or bad faith was raised in the protest, this protest ground is dismissed.

We note that, in its comments on the agency report, LNM alleges that the contracting officer failed to respond to a letter from SBA seeking procurement opportunities in support of LNM and identifying services similar to those covered by part of the RFP. LNM contends that the agency's failure to respond to SBA's letter constituted a violation of Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.803(b), which provides that

contracting activities "should respond to SBA requests for contract support within 30 calendar days after receipt." We dismiss this new allegation as untimely. A protest of other than apparent solicitation improprieties must be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1992). Protesters are not allowed to submit their allegations to our Office in a piecemeal fashion. Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130. LNM provides no indication that it learned of the basis of this allegation for the first time after it filed its protest; the agency report makes no reference to the matter. Accordingly, this new contention is untimely.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel